

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PATRICK GARANT,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY  
CO.,

Defendant.

Case No. 2:18-cv-12619-DML-RSW

**MOTION TO VACATE THE SCHEDULING ORDER AND FINAL  
PRETRIAL CONFERENCE AND JURY TRIAL DATES**

Defendant Norfolk Southern Railway Company, by its counsel, moves to vacate the scheduling order and the final pretrial conference and jury trial dates pending oral argument and a ruling on Defendant's motion for summary judgment (ECF No. 25). In support of its motion, Defendant states the following.

1. On November 8, 2018, the Court entered a Scheduling Order setting the following deadlines: discovery cutoff May 30, 2019; motions challenging experts filed by June 17, 2019; dispositive motions filed by June 17, 2019; final pretrial conference set for February 4, 2020 at 3:00 p.m.; and jury trial set for February 25, 2020 at 8:30 a.m. (ECF No. 15.)

2. On May 6, 2019, upon the parties' joint motion, the Court extended the discovery deadline to July 1, 2019 and the deadline to file dispositive and *Daubert* motions to July 15, 2019.

3. On July 15, 2019, Defendant filed its motion for summary judgment and *Daubert* motion to exclude the reports and testimony of Plaintiff's "expert" Dr. Rebecca Summary (the "Pending Motions"). (ECF Nos. 24-27.) Both motions are fully briefed. (ECF Nos. 24-27, 28-33.)

4. Oral argument on the Pending Motions was originally set for November 12, 2019. (ECF No. 28.)

5. At Plaintiff's request, the Court reset oral argument on the Pending Motions to December 17, 2019, to accommodate the schedule of Plaintiff's former counsel, Carl Kessinger.

6. On November 15, 2019, shortly after requesting that the Court reschedule oral argument on the Pending Motions to accommodate his schedule, Kessinger filed a motion to withdraw as counsel of record, asserting that he could no longer represent Plaintiff without violating the applicable rules of professional conduct. (ECF No. 34.)

7. On December 4, 2019, the Court issued an Order granting Kessinger's motion to withdraw as counsel of record, staying this action for a period of 30 days

to allow Plaintiff an opportunity to find new counsel, and adjourning the hearings on Defendant's Pending Motions until further notice. (ECF No. 36.)

8. At the December 4, 2019 hearing on Kessinger's motion to withdraw as counsel, Plaintiff represented to the Court and Defendant's counsel that he had already retained new counsel and expected his new counsel to be filing an appearance shortly.

9. To date, no new counsel has filed an appearance on behalf of Plaintiff.

10. On December 23, 2019, Plaintiff's remaining counsel, John A. Tosto, filed a motion to withdraw as counsel of record. (ECF No. 37.)

11. To date, the Court has not held a hearing on Defendant's Pending Motions; nor has it ruled on Tosto's motion to withdraw as counsel of record. A hearing on Tosto's motion to withdraw is scheduled for January 15, 2020 at 3:00 p.m. (ECF No. 38.)

12. The parties' pretrial disclosures are currently due on January 6, 2020, and motions *in limine* are due on January 16, 2020. In addition, the final pretrial conference is set for February 4, 2020, and the jury trial is scheduled to begin on February 25, 2020. (ECF No. 15.)

13. Defendant requests that the Court vacate all of the current deadlines, the February 4, 2020 final pretrial conference date and the February 25, 2020 trial date, because the Court has not yet ruled on Tosto's motion to withdraw or the

Pending Motions. Thus, it is unclear who is representing Plaintiff in this action. In addition, to the extent this case proceeds to trial, the issues and claims to be tried are not yet clearly defined.

14. This request is made in good faith and not for the purpose of causing undue delay.

15. On December 16 and 18, 2019, Defendant's counsel, Kathryn Clark, contacted Tosto via email regarding the substance of this motion, but Tosto did not respond to Clark regarding whether Plaintiff confers with this motion or to schedule a time to confer. Shortly thereafter, Tosto filed his pending motion to withdraw as counsel of record. On January 3, 2020, Clark called Tosto to attempt to confer regarding this motion by telephone, but was unable to reach him.

16. Defendant has not attempted to confer with Plaintiff directly about the substance of this motion because Tosto still represents him and Plaintiff represented to the Court that he has retained new counsel. Defendant does not know the identity or contact information of Plaintiff's new counsel.

WHEREFORE, for the foregoing reasons, Defendant Norfolk Southern Railway Company respectfully requests that the Court vacate all of the current deadlines, the February 4, 2020 final pretrial conference date and the February 25, 2020 jury trial date and issue an Order resetting these deadlines and dates after it has ruled on Defendant's pending motion for summary judgment.

Dated: January 3, 2020

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY CO.

By: /s/ Kathryn S. Clark  
One of its Attorneys

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2020, I filed the foregoing with Clerk of the Court via the Court's electronic case filing/case management (ECF/CM) system, which will send a true and accurate copy on the following counsel of record via e-mail/Notice of Electronic Filing:

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Date: January 3, 2020

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